

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

Application of Verizon New Jersey Inc.  
and Verizon New York Inc. to Discontinue  
Domestic Telecommunications Services

WC Docket No. 13-150

**COMMENTS OF  
NEW YORK ATTORNEY GENERAL ERIC T. SCHNEIDERMAN**

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## Background

On June 7, 2013, Verizon New Jersey Inc. and Verizon New York Inc. (“Verizon”) filed a joint application requesting authority under section 214 of the Communications Act and § 63.71 of the FCC Rules to discontinue domestic telecommunications services in parts of New York and New Jersey affected by Hurricane Sandy.<sup>1</sup>

According to Verizon’s application, “in parts of Fire Island [New York], damage varies from house-to-house, with some homes losing all service and others continuing to be able to use the existing copper facilities, at least for the time being.”<sup>2</sup> The Verizon Application seeks to discontinue “its interstate wireline telecommunications services to customers previously served over copper infrastructure that is no longer usable” on western Fire Island.<sup>3</sup> Verizon states that “given the extent of the devastation . . . in certain areas where the deployment of new wireline facilities is not practical, Verizon will make available an alternative voice telephone service to these customers using Verizon Voice Link.”<sup>4</sup> As shown by the May 3, 2013 proposed tariff Verizon filed with the New York State Public Service Commission (“NYSPSC”), Verizon desires to replace

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<sup>1</sup> Letter from Frederick E. Moacdieh, Executive Director – Federal Regulatory Affairs, Verizon, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, Attach. (filed June 7, 2013) (“Verizon Application”), available at <http://apps.fcc.gov/ecfs/document/view?id=7022424983>.

<sup>2</sup> *Ibid*, at 2.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

its legacy wireline networks with Voice Link in two distinct circumstances.<sup>5</sup> These are where Verizon:

- (a) certifies and demonstrates that a substantial portion of its facilities in the area is destroyed, rendered unusable, or beyond reasonable repair, or
- (b) demonstrates that the use of wireless to serve specified customers, or groups of customers, is otherwise reasonable in light of the geographic location, the availability of competitive facilities to serve those customers or groups of customers, or in light of other criteria acceptable to the Commission.

Thus, even though Verizon's FCC application specifically addresses only beach areas in New York and New Jersey, how the Commission rules will have implications for customers in many other rural communities where damage from Hurricane Sandy is not involved and neither cable nor fiber networks are available alternatives.

Verizon has publicly acknowledged its desire to replace all of its copper networks with wireless where it has not deployed FiOS, and is merely exploiting the damage from Hurricane Sandy to achieve this goal. Until now, whenever a natural disaster damaged an ILEC's facilities, the company was required to restore wireline service to all customers, not force the customers to accept a lesser communications service. Moreover, the NYSPSC recognized that Verizon was moving too fast to replace legacy wireline networks with Voice Link generally. Although they granted Verizon permission to proceed with a pilot on Fire Island to test the adequacy of Voice Link, that pilot began only in May and will not be completed until late winter. Commission action on Verizon's application is therefore premature.

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<sup>5</sup> NYSPSC Case 13-C-0197 – Tariff filing by Verizon New York Inc. to introduce language under which Verizon could discontinue its current wireline service offerings in a specified area and instead offer a wireless service as its sole offering in the area, PSC NY No. 1—Communications, Section 1, 1<sup>st</sup> Revised Page 60 and Original Page 60.1 filed May 3, 2013.

On June 28, 2013, the Commission invited public comments on the Verizon application.<sup>6</sup> The New York Attorney General's Office submits these comments in opposition to Verizon's FCC application because there are numerous shortcomings to Voice Link being offered as the substitute for wireline service in areas where customers have no alternative options.

### **The Commission Should Deny Verizon New York's Application**

#### **1. Verizon is exploiting damage from Sandy to justify preexisting plans to abandon its copper networks in all areas not served by FiOS.**

Far more is at stake in this proceeding than the service provided to Fire Island customers alone. Many months before Verizon's facilities along the Atlantic seaboard were damaged by Hurricane Sandy, Verizon publicly stated its intention to migrate customers from copper to FiOS wherever the company installed fiber, and to wireless everywhere else.

CEO Lowell McAdam announced this new Verizon corporate strategy a year ago:

[T]he vision that I have is we are going into the copper plant areas and every place we have FiOS, we are going to kill the copper. We are going to just take it out of service and we are going to move those services onto FiOS. We have got parallel networks in way too many places now, so that is a pot of gold in my view.

And then in other areas that are more rural and more sparsely populated, we have got LTE built that will handle all of those services and so we are going to cut the copper off there. We are going to do it over wireless.<sup>7</sup>

It is clear that Verizon is leveraging the storm damage from Sandy as part of its long-term strategy to abandon its copper networks on western Fire Island, where it does

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<sup>6</sup> See DA 13-1475 - Comments Invited on Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services, issued June 28, 2013.

<sup>7</sup> See Thompson Reuters Street Events Edited Transcript of June 21, 2012 1:00 P.M. G.M.T interview of Verizon Chairman and CEO Lowell McAdam at Guggenheim Securities Symposium.

not have a FIOS network, and force customers to accept wireless Voice Link. Hurricane Sandy is hardly the first time Verizon or other ILECs have experienced major destruction of their network facilities due to natural disasters, such as Irene and Lee damage in the Catskills in August-September, 2011 or ice storm damage to Upstate New York in December 2008. Until now, whenever such disasters occurred, Verizon prided itself on the efforts of its employees to accomplish the task of recovering from natural disasters by promptly restoring telephone service:<sup>8</sup>

In 2008, [Verizon employees] . . . responded with tremendous skill when ice storms, hurricanes and other emergencies threatened our customers' vital communications lines.

Indeed, after the Hurricane Irene – Tropical Storm Lee damage in the Catskills region in 2011, the NYSPSC required Verizon to use its best effort to restore service to affected customers after such extreme weather events.<sup>9</sup> Never before has any ILEC's solution to storm damage been to abandon its copper network and force customers to accept an experimental wireless service like Voice Link.

Moreover, the Verizon application contains no proof to support its assertions that repair of its Fire Island wireline facilities is not “practical.” The Commission should not take as true Verizon's unverified assertions about the condition of its facilities on Fire Island post-Sandy. Currently, the NYSPSC is also investigating identical assertions with

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<sup>8</sup> 2008 Verizon Annual Report, President's Letter to Shareholders, [http://www22.verizon.com/investor/app\\_resources/interactiveannual/2008/fea\\_02d.html](http://www22.verizon.com/investor/app_resources/interactiveannual/2008/fea_02d.html).

<sup>9</sup> See NYSPSC Case 10-C-0202 – Verizon Service Quality Improvement Plan, *Order to Show Cause*, issued February 17, 2012 (The Commission penalized Verizon \$400,000 for insufficient service restoration efforts following the Irene and Lee storms), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={27A3ABB1-DD8A-4194-AB22-E7635C219D79}>.

respect to Verizon's wireline facilities on Fire Island.<sup>10</sup> The NYSPSC Staff has required Verizon to produce detailed records of the facilities that were in use before Sandy struck, which facilities were affected by the storm, and how the costs of repair would compare with the company's Voice Link installation expenses. Until the NYSPSC investigation is completed, and the true costs have been independently analyzed, the record before the FCC is inadequate to act on the Verizon application.

It is now evident that Verizon is attempting to substitute wireless Voice Link for wireline facilities wherever it can convince customers that repair of their wireline service will no longer be available. Even in areas far beyond Fire Island that were unaffected by Hurricane Sandy, Verizon has pushed customers to substitute Voice Link for wireline service without clearly disclosing all of the significant differences in service such as Voice Link's inability to support DSL, alarm systems, medical alert devices, or fax machines.<sup>11</sup> According to the Communications Workers of America (and confirmed by complaints to the Attorney General), Verizon is rolling out Voice Link from New York City to the Catskills region, and all the way to Buffalo. Verizon is not informing customers outside Fire Island that Voice Link is merely an optional choice or that the NYSPSC has a pending proceeding to consider Verizon's substitution of Voice Link for wireline service in areas outside of Fire Island. Indeed, the NYSPSC has suspended the portion of Verizon's proposed tariff regarding the use of wireless service to replace

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<sup>10</sup> See Staff Interrogatories and Document Requests propounded to Verizon in NYSPSC Case 13-C-0197, available at: <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=13-C-0197>.

<sup>11</sup> See NYSPSC Case 13-C-0197, EMERGENCY PETITION OF NEW YORK ATTORNEY GENERAL ERIC T. CHNEIDERMAN FOR AN ORDER PREVENTING VERIZON FROM ILLEGALLY INSTALLING VOICE LINK SERVICE IN VIOLATION OF ITS TARIFF AND THE COMMISSION'S MAY 16, 2013 ORDER, filed June 26, 2013, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={A3F0A269-8613-4437-AEB3-35ACCF6E5A47}>.

wireline in other areas of the state pending its assessment of Verizon's pilot project on Fire Island. The NYSPSC has also required Verizon to provide detailed information "for all Voice Link devices/services that have been installed at any customer premises locations outside of the Western Fire Island area."<sup>12</sup>

## **2. Voice Link Is Significantly Different From, and In Many Respects Inferior to Traditional Wireline Service**

The Attorney General's Office does not maintain that Verizon must continue its wireline service throughout its entire territory. Where Verizon has established a fiber-based alternative using FiOS, the substitution of this more cost efficient and reliable technology is reasonable.<sup>13</sup> However, unlike the upgrading of customers from wireline to FiOS, wireless Voice Link is not an adequate substitute for wireline service. Verizon's proposal to substitute Voice Link service for its legacy copper wireline service will deprive thousands of customers of essential features and services they have come to depend on. Verizon's Terms of Service for Voice Link identifies numerous features that differ significantly from wireline service and that leave consumers without services they previously received or that impose significant new burdens and obligations on consumers. For example, unlike traditional wireline service:

- Voice Link Service "is not compatible with fax machines, DVR services, credit card machines, medical alert or other monitoring services or some High Speed or DSL Internet services."<sup>14</sup> Where customers have no FiOS

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<sup>12</sup> See DPS Staff Third Set of Interrogatories and/or Document Requests, issued June 28, 2013, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D093FAB9-CECF-4CD9-89AC-E41994DA4649}>.

<sup>13</sup> See, e.g., NYSPSC Case 13-V-0002, *Petition of Verizon New York Inc. for Order of Entry for 6 Buildings in the City of New York*, filed January 2, 2013 (Verizon seeks to make voice-only FiOS available to residents of certain apartment buildings where wireline facilities were damaged during Hurricane Sandy).

<sup>14</sup> *Verizon Voice Link Terms of Service*, revised June 12, 2013 at ¶ 1.b.

or cable modem Internet providers to switch to (such as in Fire Island and other rural areas), those who rely on these services have no alternatives if switched to Voice Link.<sup>15</sup>

- Because Voice Link “may not be compatible with certain monitored home security systems,”<sup>16</sup> customers’ homes and businesses will be at greater risk from flooding by burst plumbing, fire or burglars.
- Although wireline customers whose service is suspended for nonpayment can still reach a 911 operator in emergencies, suspension of Voice Link “will prevent ALL Service, including any 911 dialing and associated emergency response services.”<sup>17</sup> Customers may also lose the ability to receive or place calls, even to 911, if they fail to “promptly notify Verizon” of a change in their address, email, or credit card expiration date.<sup>18</sup> Thus any customer who relocates from one part of Fire Island to another and brings the Voice Link device along, but does not report the new address to update the 911 database risks having first responders dispatched to an incorrect address.
- Customers must “defend, indemnify and hold harmless Verizon from and against all claims . . . for infringement of any intellectual property rights arising from use of” Voice Link or its software.<sup>19</sup> Wireline customers incur no such liability.
- Voice Link Service “does not allow the Customer to make 500, 700, 900, 950, 976, 0, 00, 01, 0+, calling card or dial-around calls (e.g., 10-10-XXXX),”<sup>20</sup> so customers will be unable to use such pay-per-call information services. Voice Link Service “does not allow the Customer to accept collect calls or third number billed calls. The Company will not bill any charges on behalf of other carriers, denying Fire Island customers the ability to choose competitive alternatives. [Customers] must have an International Calling Plan in order to make international calls.”<sup>21</sup> Wireline

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<sup>15</sup> In place of DSL, customers are being offered a wireless Internet access service which is less reliable, more vulnerable to congestion, and costs far more than DSL.

<sup>16</sup> *Id.*, ¶ 1.d.

<sup>17</sup> *Id.*, ¶ 7.b.

<sup>18</sup> *Id.*, ¶ 2.e.

<sup>19</sup> *Id.*, ¶ 10.d.

<sup>20</sup> *Id.*, ¶ 1.g.

<sup>21</sup> *Id.*



customers are able to subscribe to toll and international calling plans provided by other carriers, and have these and other third-party service charges included on their Verizon bills enabling a single monthly payment.

- Voice Link Service “is subject to the availability of adequate wireless coverage throughout your home, and is not available in all locations.”<sup>22</sup>
- Unlike wireline service, which supplies its own power over the copper wiring, Voice Link uses customers’ house current to operate.<sup>23</sup> Verizon has not disclosed how much customers’ electric utility bills will increase to power the Voice Link device. Also, whenever electric power is interrupted, Customers may have to “reset or reconfigure [their Voice Link] equipment.” This may be difficult for some physically limited or technologically unsophisticated customers to perform.
- During power interruptions, the wireless Devices used in Voice Link are battery operated. Although the Devices include a rechargeable battery back-up that provides 36 hours of standby power and up to 2.5 hours of talk time in the event of a commercial power outage, “[a]fter the battery is exhausted, the Service (including 911 dialing) will not function until power is restored.”<sup>24</sup> Wireline service supplies its own power and many New York consumers continued to have functioning wireline service during power outages following Hurricane Sandy extended for a week or more.
- After the expiration of a one-year replacement warranty for the battery back-up included with customers’ wireless Device, customers “are responsible for replacing the back-up battery as needed,”<sup>25</sup> but Verizon has not disclosed the cost of such replacement batteries.
- Wireline customers purchase their own telephones from competitive manufacturers, but the Voice Link device is only supplied by Verizon, which continues to own it. Thus, customers will have to pay Verizon to repair the device if “such repair or maintenance is made necessary due to misuse, abuse or intentional damage to the Device.”<sup>26</sup> Verizon has not disclosed what repair or replacement might cost customers in such event.

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<sup>22</sup> *Id.*, ¶ 1.h.

<sup>23</sup> *Id.*, ¶ 2.b.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*, ¶ 2.d.

<sup>26</sup> *Id.*, ¶ 2.f.

- When wireline customers end their service with Verizon, they have no equipment to return to the company. However, Voice Link customers who cancel their service “are responsible for returning their Wireless Device to [Verizon] in an undamaged condition. Failure to return the Device within 30 days . . . may result in [Verizon] charging [customers] an unreturned equipment fee”<sup>27</sup> of undisclosed amount.

These differences between Voice Link and wireline service stand to significantly disadvantage Fire Island and other rural consumers. While wireline service continues to work even during long power outages, Voice Link customers can only have basic voice service for a few hours after their home loses electric service. Thus, in a prolonged emergency, customers will not be able to dial 911 and reach emergency services when their need is greatest. Also, customers who depend on alarm services at their vacation homes to protect their property while away will be more exposed to losses from fires, burglary, weather damage, etc. Business customers will also be unable to rely on alarm services to protect their stores after hours. In areas without either FiOS or cable modem service and where only Voice Link is provided,<sup>28</sup> customers will lose their Internet access<sup>29</sup> as well as their ability to fax documents. Operator services such as collect calls and billing calls to a third-party’s account will not be possible. With Voice Link, for the first time, the cost of electricity required to operate telecommunications and the cost to replace its batteries will be customers’ expense, but monthly Voice Link rates are no lower than those for Verizon’s wireline service.

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<sup>27</sup> *Id.*

<sup>28</sup> This is the current situation in western Fire Island where many consumers had relief on DSL for Internet service prior to Sandy.

<sup>29</sup> Compare the number of “Working Lines” to “DSL” lines in Verizon’s June 21, 2013 revised response to DPS Staff Information Request 1.b.

Verizon's proposal to substitute Voice Link in lieu of repairing wireline service has also generated widespread opposition. On Fire Island, a community with only 500 year-round residents, over 400 public comments opposing Verizon's Voice Link tariff request have been lodged so far with the NYSPSC, and the comment period remains open until September 13, 2013.<sup>30</sup> The Commission should weigh this consumer opposition before determining whether Verizon's Application is in the public interest.

### **3. The Commission Should Assess The Fire Island Pilot Test Before Acting**

It also would be premature for the FCC to act on the Verizon Application at this time. The NYSPSC's May 16, 2013 Order granted Verizon only provisional authority to install Voice Link in place of repairing its wireline facilities on Fire Island as part of a pilot project which has run its course and whose preliminary results will not be reported back to the NYSPSC until November 1. Furthermore, the NYSPSC will not rule finally on Verizon's application for Fire Island until the end of 2013, at the earliest.<sup>31</sup> In effect, Fire Island is currently being used to test the adequacy and reliability of Voice Link much to the apparent dismay of Fire Island residents who have voiced their objections to the NYSPSC.<sup>32</sup>

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<sup>30</sup> See PSC EXTENDS COMMENT PERIOD ON VOICE LINK, released July 9, 2013, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={3AE2191E-B764-43E3-B1F4-FC159BB914C8}>.

<sup>31</sup> See NYSPSC Case 13-C-2013, *supra*, ORDER CONDITIONALLY APPROVING TARIFF AMENDMENTS IN PART, REVISING IN PART, AND DIRECTING FURTHER COMMENTS, issued May 16, 2013 ("May 16 Order"), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={C0F21317-B7CE-4AEE-9A38-3393D1DEB670}>.

<sup>32</sup> See 435 public comments filed to date, with the comment period open until September 13, 2013: <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=13-C-0197&submit=Search+by+Case+Number>.

The NYSPSC “has not approved the abandonment of copper facilities or wireline service and . . . has not reached a final decision on these issues”<sup>33</sup> and therefore the FCC should not take that step now and should not construe from NYSPSC's approval of the pilot project that NYSPSC is ready to give its approval to the wholesale replacement of landline phone service with Voice Link. Given Verizon’s failure to act to provide telephone service on Fire Island until it filed the Voice Link tariff on May 3, 2013, six months after Sandy struck, the NYSPSC was left little choice at that time but to allow this pilot to proceed, “cognizant that seasonal residents and visitors are returning to Fire Island.”<sup>34</sup> However, the NYSPSC is monitoring and assessing Voice Link’s “service conditions, including service quality, outages and repair needs” during the Fire Island pilot test. The NYSPSC has ordered Verizon to submit by November 1, 2013 a report evaluating the provision of Voice Link service to Fire Island customers, detailing:<sup>35</sup>

At a minimum, the report shall include the following information: statement of the number of subscribers served by Voice Link in each month; description of the extent of customer acceptance of Voice Link as an alternative to traditional service; assessment of quality and reliability as measured by trouble reports, outages and repair intervals; description of performance during commercial power outages; description of the impact on customers’ 911 access; statement of costs associated with providing the Voice Link service; description of customer complaints and customer satisfaction; and, any other information useful in evaluating the advantages and disadvantages of Voice Link as an alternative to traditional

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<sup>33</sup> GN Docket No. 13-5 – In the Matter of Technology Transitions Policy Task Force Request for Comment on Potential Trials, July 8, 2013 letter from NYSPSC General Counsel Peter McGowan, at 2. The NYSPSC’s “temporary approval of Voice Link on the western portion of Fire Island was based on the exigent circumstances that existed in the wake of Superstorm Sandy. Verizon reported that the storm damaged a portion of the copper wire facilities on Fire Island beyond repair and, without Voice Link, no telecommunications services would become available prior to the beginning of the summer season when the population on Fire Island grows substantially.” *Id.*

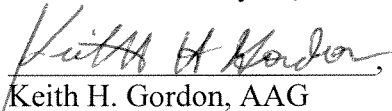
<sup>34</sup> May 16 Order, *supra*, at 8.

<sup>35</sup> *Id.* at 9.

service and the need for modifications to the service.

Accordingly, the Commission should take no action on Verizon's pending § 214 Application until the results of the Fire Island test case are in and fully analyzed.

Dated: July 29, 2013

, for  
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